all the facts of the case; while allowing it to be so considered, it does not do away with the necessity of other evidence."

The other evidence is of little, if of any, value and merely shows that the two appellants were seen together about midnight on the 19th/20th September 1955. In fact, the convictions rest entirely on the confession of the 2nd appellant which we have already pointed out is wrong.

There is a further matter which should be mentioned. The second issue of fact put to the assessors was :—

"If your answer to question 1 be in the affirmative, do you consider that confession to be sufficient to find No. 1 guilty of the charge?"

This question should not have been put to the assessors, as it was a point of law for the learned trial judge to determine. At the highest, an expression of opinion on such a matter by an assessor would be of little value. The learned trial judge having recorded the opinions of the assessors convicted both the appellants.

We can only assume, as there was no reasoned judgment that the learned trial judge considered that the confession of the 2nd appellant was a sufficient basis on which to found the conviction of both accused. We would point out that in the absence of a reasoned judgment, the judges of the Court of Appeal are placed in a difficulty, for they do not know the precise reasons which have caused the learned judge to convict, and only if a consideration of the whole case convinces them that no other decision was possible can they dismiss the appeal.

Under section 198 of the Criminal Procedure Code it is the trial judge who is dominus, and he can accept or reject the opinion of the assessors on such issues of fact relevant to the charges as have been put to them. It is from the trial judge's judgment that the appeal lies. It is, there, desirable that in all cases a judgment dealing with the points of law should be delivered. In some cases only a brief judgment may be necessary, but in our view there should always be a reasoned judgment.

For these reasons we allowed the appeal and quashed the convictions.

Appeal allowed.

ANNAMALAI CHETTIAR v YEOH KEE TIN (m.w.)

[A. C. J. (Buhagiar J.) October 21, 1955]

[K. L. — F.M. Civil Appeal No. 45 of 1955]

Courts Ordinance, 1948, ss. 17, 18 & 42 — Application for stay of execution — Co-ordinate jurisdiction.

This was a motion preferred to the Court of Appeal for stay of execution of the order of the High Court until the final disposal of the appeal. At the hearing of the application counsel for the respondent raised a point by way of preliminary objection that the Court of Appeal had no jurisdiction to entertain the application by reason of the provisions of ss. 42 and 17 of the Courts Ordinance 1948. It appeared that a similar application had been made to the learned trial Judge but such application had been withdrawn.

Held: while the Court of Appeal has co-ordinate jurisdiction with the Court below, the Court of Appeal will not exercise its jurisdiction until a similar application has been made to and refused by the High Court.

Case referred to :—

(1) *Cropper v. Smith* (1883), 24 Ch. D. 305.

MOTION in Civil Appeal.

D. G. Ironside for the appellant-applicant.

Ng Ek Teong for the respondent.

Buhagiar J. : — The appellant-applicant gave notice of motion before the Court of Appeal for an order that execution of the order dated the 16th day of May 1955, in Kuala Lumpur Supreme Court Civil Suit No. 47 of 1955 be stayed on such terms ns this Court shall deem fit till the final disposal of the appeal in the above matter; the application came before me under the provisions of section 18(1) of the Courts Ordinance, 1948.

At the hearing of this application counsel for the respondent raised a point by way of preliminary objection that this Court had no jurisdiction to entertain the application by reason of the provisions of sections 42 and 17 of the Courts Ordinance, 1948.

Counsel for the parties informed me that a similar application had been made to the learned trial Judge but such application was withdrawn and no order was made except as to costs.

Counsel for the applicant relied on section 536 of the Civil Procedure Code (F.M.S. Cap. 7). It is clear from section 529 of the said Code that the provisions of section 536 do not apply to procedure on

appeal from the High Court; and if they were applicable they would have been in conflict or inconsistent with the provisions of sections 42 and 17 of the Courts Ordinance, 1948, and by virtue of section 109 of the Courts Ordinance, 1948, superseded. The relevant provisions are sections 42 and 17 of the Courts Ordinance, 1948.

The source of these two sections is to be found in rules 16 and 17, respectively, of Order 58 of the English Rules of the Supreme Court. The effect of these two rules was fully considered in *Cropper v. Smith*[1]. There it was held that Order 58, rule 16, gives concurrent jurisdiction to the Court below and to the Court of Appeal as to stay proceedings pending an appeal; that rule 17 does not take away any of the jurisdiction thus given to the Court if an application has first been made to the Court below. Brett M.R. said (at p. 308):—

"That (rule 17) imposes a limitation on the action of the Court of Appeal, but a limitation not affecting its jurisdiction, and does not at all show that the motion in the Court of Appeal is an appeal. On the contrary, the 17th rule seems to me to first assume, as the 16th rule did, that it is not an appeal, that there is an alternative jurisdiction, and alternative jurisdiction is of course co-ordinate. Then in order that the Court of Appeal and the Court below may not incur the risk of deciding in different ways as to staying proceedings without either of them knowing of the application to the other, the rule imposes this limitation, that although the jurisdiction is co-ordinate, and although it is alternative, yet the Court of Appeal will not exercise its jurisdiction until it knows whether the co-ordinate jurisdiction of the Divisional Court has been exercised and how. That seems to me to be the true reading of the 17th rule."

And Cotton L.J. (at p. 313) said:—

"The 16th rule of Order LVIII provides that an appeal shall not stay the execution of the decree appealed from, except so far as the Court below or the Court of Appeal may so order. That undoubtedly gives co-ordinate jurisdiction to the Court below and the Court of Appeal, and if it stood alone this Court might without any application having been made to the Court below, entertain an application to stay proceedings as distinguished from an application to grant an injunction for the protection of the property pending the appeal. But then rule 17 provides that where the application may be made under any of the rules either to the Court below or to the Court of Appeal, then it shall be made in the first instance to the Court below. That prevents this Court from entertaining an application to stay proceedings until a similar application has been made to and refused by the Court below."

Following this authority I hold that while this Court has co-ordinate jurisdiction with the Court below this Court will not exercise its jurisdiction until a similar application has been made to and refused by the High Court.

The application must, therefore, be dismissed, with costs.

Application dismissed.

Solicitors: *Lovelace & Hastings; Braddell & Ramani.*

LEE SIEW EAN v. REG.

[A. Cr. J. (Spenser Wilkinson J.) November 15, 1955]

[Penang — Criminal Appeal No. 44 of 1955]

Women & Girls Protection Ordinance (Cap. 33), s. 8(b) — Knowingly permitting premises to be used as a brothel — Definition of brothel

The appellant in this case was convicted of an offence under s. 8(b) of the Women and Girls Protection Ordinance in that being the occupier of No. 2B Irving Road, Penang she knowingly permitted the said premises to be used as a brothel. There was evidence in this case that at least three of the four rooms in the house had been sublet by the appellant. There was also evidence that the other room was also used by a prostitute.

Held: (1) as the appellant had sublet the three rooms she ceased to be the tenant in occupation of them and therefore she could not be found guilty of allowing them to be used as a brothel; (2) the learned Magistrate was wrong in finding that the premises were used by two or more persons for the purpose of prostitution and therefore the conviction must be quashed.

Cases referred to:—

(1) *Michi & Anoyu v. R.* (1934) M.L.J. 11.
(2) *Tan Poh Whatt v. Public Prosecutor* (1940) M.L.J. 172.
(3) *Tay Kiar Kiar v. R.* (1950) M.L.J. 173.
(4) *Siviour v. Napolitano* (1931) 1 K.B. 636.
(5) *Lam Ah Fong v. R.* Penang — Criminal Appeal No. 48 of 1948 — unreported.

MAGISTRATE'S APPEAL.

Lim Kean Siew for the appellant.

D. C. Jackson (Sr. Federal Counsel) for the respondent.

Spenser Wilkinson J.: — The appellant was charged under paragraph (b) of Section 8 of the Women and Girls Protection Ordinance with being the occupier of No. 2B, Irving Road. Penang she knowingly permitted the said premises to be used as a brothel.

There was some evidence that at least three of the rooms in this house had been sub-let by the appellant and the main ground of appeal was that the charge having been laid under paragraph (b) of section 8 confusion had arisen throughout the case as to whether the rooms which had been sub-let had been used for the purposes of prostitution or whether the one room which had not been sub-let had been so used. If the sub-let rooms had been so sub-let by the appellant with the knowledge that they were or were to be used as a brothel or if she was wilfully a party to the continual use of such rooms as a brothel then she would have been guilty of an offence under paragraph (c) of the section. As long, however, as she was charged under paragraph (b) any rooms which had